



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD  
ATTORNEY GENERAL

November 3, 1953

Hon. Thomas J. Gibson  
Texas State Librarian  
Capitol Station  
Austin, Texas

Letter Opinion No. MS-106

Re: Effect of Section 5f of Article VI, Chapter 81, Acts of the 53rd Legislature on issuing salary warrants under Item No. 20 and Item No. 26 of the current appropriations to the State Library.

Dear Mr. Gibson:

You have asked whether you may pay salaries to the employees engaged in book repairs, making temporary binding and in preparing materials for press out of Items 20 and 26 of the appropriations to the Texas Library and Historical Commission in view of the restrictions contained in Section 5f of Article VI of the current general appropriation act.

The opinion of this office on the meaning and application of Section 5f is stated in Opinion No. S-109 (1953) which is attached. In that opinion we concluded that Section 5f restrictions apply only to appropriation items of the types listed and to other items of the same general nature or class as those listed. We also stated that whether a given item is of the same general nature or class must be determined from the circumstances of each case.

We have examined Item No. 20 and have concluded that it is of the same general nature or class as those listed in Section 5f. Item No. 20 follows a detailed listing of "salaries and wages" items for the Main Library Division (including Item No. 18 for "Seasonal Help.") Likewise, it is distinct from Item No. 19 for "Travel." Obviously, Item No. 20 is not a "lump sum" appropriation to finance a particular State program or project requiring labor and other diverse expenditures from a single item. "Binding" and "book repairs" are the only listed elements of Item 20 which, arguendo, require labor. But these two maintenance functions of the State Library do not, in our judgment, constitute independent State programs or projects such as are financed by the items involved in Opinion Nos. S-109 and MS-105.

Likewise we have examined Item No. 26 and have concluded that it is of the same general nature or class as those

Hon. Thomas J. Gibson, page 2 (MS-106)

listed in Section 5f. Item No. 26, like Item 20, appears to be an operating expense item to finance the usual business of the division rather than any independent State function or program. The inclusion of the term "seasonal help" in Item No. 30, a corresponding appropriation "for other expenses" of the Legislative Reference Division, lends additional support to the conclusions regarding Item Nos. 20 and 26.

We have examined our letter opinion of September 12, 1947, to Francis H. Henshaw, State Librarian, and are satisfied that nothing herein expressed conflicts with that holding. As pointed out in the attached opinion, the Legislature has seen fit to make substantial changes in the pertinent general rider.

Therefore, you are respectfully advised that Section 5f does apply to Item Nos. 20 and 26 to the State Library and Historical Commission and that salaries may not be paid from these items.

However, while you may not under Section 5f pay a salary to an employee from these items, we deem it appropriate to mention that we now are aware of no legal bar to your independently contracting for the performance of the services in question and paying such contractors from Item Nos. 20 and 26. Such contractors would not be State employees, of course, and would not be entitled to the several benefits and privileges reserved to such employees, but it is entirely possible that you may arrange the terms of such contracts so as to obtain the technical training and experience, continuous service and other necessary terms of such service as outlined in your request.

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General

By  
Phillip Robinson  
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